SUBMISSION TO THE SCRUTINY OF ACTS AND REGULATIONS COMMITTEE’S INQUIRY INTO THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

The Victorian Charter of Human Rights and Responsibilities Act 2006 (‘the Charter’) has been in operation for just on four years. In that time it has helped to inform Ministers and public servants about the value of human rights when developing policy, has ensured numerous public authorities take into account fundamental rights when making decisions that affect individuals and has been used in a small number of legal cases to raise questions about human rights. It is still in its early infancy and so this review (as mandated by section 44 of the Charter itself) is too early to give a definitive view on the effect of the Charter. As such, my submission is that the Charter be allowed time to establish itself in the legal landscape and within public authorities before any decision is made on attempting to amend it.

I am writing this submission to the Committee in my private capacity. I am a Victorian with a background in human rights law having studied it at a Masters level at the University of Cambridge and having worked, until recently, as a Policy Officer at Liberty (the National Council for Civil Liberties Inc) in the UK. As such I have a keen understanding of how the UK’s Human Rights Act 1998 (‘HRA’) operates, which the Victorian Charter was largely modelled on. Like the Charter, following the introduction of the HRA there was little public education about the rights and freedoms it contained and how it worked. As such a number of myths and misunderstandings about the HRA have sprung up, many of which have also arisen in Victoria. The answer to this is a greater effort and funding commitment to educating the public about the value of human rights and the need for their protection.

This is not to suggest that there will never be a need to provide for further protections in the Charter. Rather, my submission is that there is a need to protect and promote the rights that are currently there and ensure the public has a greater understanding of these rights before there is any move to add rights such as socio-economic rights or to amend the Act to provide for better accountability mechanisms.

As the Charter currently stands it protects the most basic and fundamental rights. It protects the right to life, equality, liberty, privacy, property, a fair hearing, free speech and protest and provides for freedom of religion and conscience and freedom of movement. It prohibits slavery or torture/inhuman or degrading treatment and
retrospective punishment. It states the importance of the family and the special needs of children and the rights of all cultures and emphases the importance of the right to vote and to be involved in public affairs. As the late Lord Bingham said in relation to a list of largely the same rights protected by the UK Human Rights Act:

Which of these rights, I ask, would we wish to discard? Are any of them trivial, superfluous, unnecessary? ... There may be those who would like to live in a country where these rights are not protected, but I am not of their number.\(^1\)

It is clear that the most fundamental of human rights are already contained in the Victorian Charter. Until there is better understanding and greater consensus around the rights that already exist, an extension of rights protection is not politically realistic.

As the Charter stands it has had a tangible, yet difficult to measure, effect on public life in Victoria. In developing policy Ministers and public servants are bound to take into account human rights. Statements of human rights compatibility for all legislation introduced into Parliament, human rights certificates for most regulations and reports on human rights compatibility by your Committee have all helped to begin to create a public and legal culture with a greater awareness of and respect for human rights. There are already numerous instances, some of which are documented but many of which go unreported, of the Charter being used by ordinary people in their interactions with government. Looking simply at the number of legal cases taken that cite the Charter would fail to appreciate the very important use the Charter has in everyday life without recourse to the courts.

This is, by no means, intended to undervalue the application of the Charter in a legal context. The Charter has been used as a basis to determine some important issues at the Victorian Civil and Administrative Tribunal right up to the High Court. There will, of course, be claims of human rights abuses brought before the courts that have no legal merit. This does not mean the Charter is flawed, any more than when a litigant brings an unfounded negligence claim. Claims that the Charter has been ‘hijacked by criminals’\(^2\) fundamentally misunderstands the way the Charter operates. It is essential that concerted efforts are made now to ensure greater public


understanding of the rights and freedoms we have as a result of the Charter. The human rights principles contained in the Charter provide an opportunity for a unifying set of values in a diverse society, gives a mechanism for holding the executive to account and to protect and empower all of us, including the most vulnerable in our community.

The introduction of the Charter was an extremely important historical step towards rights protection throughout Australia. Despite still being in its infancy it has helped to create a greater understanding of human rights within Victoria and protected the rights of numerous ordinary Victorians. It should be given time to establish itself within the political and legal landscape of Victoria before any attempt is made to amend it. Rather, efforts should focus on educating the public and public authorities of the effect of the Charter and the fundamental rights it contains to build public confidence in and ownership of the Charter.

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